MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2022/2023

ULV4622 -LAW OF EVIDENCE II

(All Sections / Groups)

14 July 2023

Reading Time : 9.00am -9.15am (15 Minutes)
Answering Time : 9.15am -12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages and is divided in to 2 parts **(Part A and Part B)**. There are 2 questions in Part A and 3 questions in Part B.

3. Students are required to answer only **1 question in Part A (answer either Q1A or Q1B) and answer ALL 3 questions in Part B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE
   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

PART (A)
Answer only 1 question in Part A. Answer either Question1(A) or Question 1(B).

QUESTION 1 (A)

"Cross-examination is the examination of a witness by the adverse party, that is, the party opposed to the one that calls him. What is the aim of cross-examination? Really there is one aim only. It is to assist in the administration of justice by revealing the truth to the Court. The function of cross-examination is to eliminate or reduce the danger that a false conclusion will be reached. Wigmore has declared that cross-examination is beyond doubt the greatest engine ever invented for the discovery of truth."

(Per Faiza Thamby Chik JC in *Public Prosecutor v Wong Yee Sen & Ors* [1990] 1 CLJ 325

Applying the principles of the Law of Evidence in Malaysia, critically evaluate the above statement based on the limitations imposed on cross- examination.

(Total: 25 marks)

QUESTION 1(B)

"When parties had discussed and negotiated the terms of a contract, this process means that they have integrated the contract. In essence, the document can only be interpreted from considering what are contained within the four walls of the document…"

(Abang Iskandar FCJ (delivering judgment of the court) in *He-Con Sdn Bhd v Bulyah bt Ishak & Anor (as administrators for the estate of Nor Zainir bin Rahmat, the deceased) and another appeal* [2020] 4 MLJ 662)

Applying the principles of the Law of Evidence in Malaysia, assess the correctness of the above passage. Your answer must be supported with relevant statutory provisions and case law.

(Total: 25 marks)

Continued…

PART (B)
Answer all 3 questions in Part (B)
QUESTION 2

Aiman (Plaintiff) brought a claim of damages for personal injuries against Mr Marzuki (Defendant) as a result being knocked down by a car driven by the Defendant. Plaintiff contended that the Defendant has been negligent for driving beyond the permitted speed limit near a school area and encroached into Plaintiff's rightful lane. Apart from himself, the Plaintiff also called two other witnesses to support his case. Inspector Mazlan (PW2) was the Investigation Officer of the case. PW2 in his testimony stated that based on his investigation, there were no brake marks found at the point of accident. Brake marks were only found about 20 metres away from the point of accident. He supported this with several photos taken at the scene of accident marked as Exh P2(a) to (k). Finally, Plaintiff also called Mr Jack Sparrow (PW3), a crash reconstruction expert. According to PW3, if the brake marks were only found 20 metres away from the point of accident, they indicated that the tyre was not locked up and the brake was not applied before or at the point of accident.

The Defendant in his defence denied that he was driving beyond the permitted speed limit for the area. According to the Defendant, there was no speed limit sign at the area, and he recalled that he was only driving around 60 kilometres per hour. He also mentioned that he did apply the brake to avoid the collision but due to the close distance between his vehicle and Plaintiff's motorcycle, the collision was unavoidable. The Defendant also called his own crash reconstruction expert, Mr Smith (DW2). DW2 testified that absence of brake marks based on the photos taken by PW2 did not mean the brake was not applied before or at the point of accident. However, he did not elaborate further on his finding. The Plaintiff's Solicitor in his submission to the Court argued that Plaintiff has proved on the balance of probabilities that the Defendant was negligent and liable for the injuries suffered by the Plaintiff. He further argued that it is within a public knowledge that road users should drive slowly when approaching a school area and the maximum speed limit at the area is 30 kilometres per hour.

Unfortunately, the trial judge found that the Plaintiff has failed to prove that the Defendant was negligent in causing the accident and injuries sustained by Plaintiff. The trial judge in the written judgment among others held that:

Plaintiff has failed to prove that the maximum speed limit at the point of accident is 30 kilometres per hour. This important fact could have been proved via testimony of PW2 or by calling an officer from Road Transport Department. Unfortunately, none was done by the Plaintiff. This court cannot simply take a fact to exist based on public knowledge or common sense.

Further, after considering testimonies of both PW3 and DW2, I am inclined towards DW2's opinion.

Aiman was not happy with the decision and has filed an appeal to the High Court.

Based on the evidential issues involved in the above, analyse whether Aiman would be successful in his appeal. Your answer must be supported with relevant statutory provisions and case law.

(Total: 25 marks)

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QUESTION 3

Tom, a school bus driver was charged for the rape of Z, a special needs child. Z who has hearing difficulties and is mute was aged 14 at the time of the offence. The prosecution alleged that the rape had taken place in a school bus driven by Tom. Tom denied the charge and pleaded not guilty. During trial the following evidence was adduced by the prosecution:

i. a video recording of Z being interviewed by a female police officer, (PW1) which was tendered as her examination in chief. PW1 in her own evidence testified that she has more than 3 years' experience as a child interviewer after having completed a course on the subject in 2019. When asked during cross examination whether there was an attempt to get a person who was proficient in sign language to assist in the interview, PW1, testified that no request made for one;

ii. Z in her evidence in court during cross examination testified through the assistance of an intermediary, PW2, a special education teacher. After examining Z, the learned Sessions Court Judge was satisfied that Z was able to answer intelligently every question posed by the court to her and allowed her to give sworn evidence. The cross-examination proceeded but did not get very far as Z did not answer some of the questions. The defence counsel decided to stop the cross-examination as Z was incapable of answering the questions put to her;

iii. medical evidence was led during the trial through Dr. Kamala (PW3) who produced a medical report, (Exhibit P5) of her examination of Z. PW3 testified that Z had an old hymen tear at 3 and 9 o'clock positions. However, during cross-examination, PW3 agreed that the mere presence of an old hymen tear did not necessarily mean that Z has had sexual intercourse. PW3 further agreed during cross examination that her examination did not conclusively find that Z had been raped.

At the conclusion of the case the learned Session Court Judge convicted Tom and, in his judgment, stated as follows:
"The evidence of a child witness in the form of a video recording or testimony given through the assistance of an intermediary may be admitted. In offences of this nature Z is automatically presumed to be competent to give sworn evidence and her testimony is capable of sustaining a conviction even if uncorroborated. On the facts however, there is corroborative evidence from PW3."

Tom now wishes to appeal against his conviction.
Analyse Tom's potential grounds of appeal based on the evidential issues in the above facts.

(Total: 25 marks)

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QUESTION 4

Rob and Pat have been jointly charged for an offence under s. 3(1) of the Kidnapping Act 1961 for kidnapping Madam Soha (PW1) with the common intention to hold her for a ransom of RM250,000. The prosecution's narrative is that on 17 July 2022 at around 9.00am, PW1 was driving to work when her car was knocked from behind by a car driven Rob. Rob told PW1 that his cousin had a workshop and if she follows him the repairs could be done immediately. Persuaded by Rob's assurance PW1 agreed to follow him to the workshop. When PW1 arrived at the workshop, she was introduced to Pat as the workshop owner. While negotiating the repairs the two accused suddenly grabbed her hands, pulled them behind her back and tied them, they also tied her legs and blind folded her. Rob then told PW1 that her family must pay RM250,000.00 for her release or they will pour acid on her face.PW1 was then asked to call her family to ask them to bank money into the accounts given by the two accused. PW1 was subsequently released in the evening of the same day. A police report was made the next day and the two accused were arrested after they were identified by PW1.Rob and Pat both pleaded not guilty and claim that PW1 had made a mistake in identifying them. The following evidential issues arose during trial:

i. the prosecution wishes to tender evidence that both Rob and Pat have 2 previous convictions and a previous acquittal for extortion. In all the 3 previous cases they had also been jointly charged, had threatened to disfigure the victims with acid if their demands for money were not met and had rammed the victim's car from behind to cause an accident;

ii. during the cross examination of PW1 it was suggested by the defence counsel that her identification of the two accused must be a mistake as she had been blind folded, and reminded her that she must not lie to court;

ii. Rob in his dock statement stated that he is now an honest family man with 2 young children, and he no longer associates with criminal gangsters like Pat.

Analyse the above evidential issues and advise the parties.

(Total: 25 marks)

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